

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROTHY'S, INC.,

Plaintiff,

v.

BIRDIES, INC.,

Defendant.

Case No. [21-cv-02438-VC](#) (AGT)

DISCOVERY ORDER

Re: Dkt. No. 103

By February 14, 2022, Birdies must produce the following documents, which are relevant to Rothy's opposition to summary judgment:

1. Records of sales by unit, dollars and profits/costs of the Blackbird shoes—both the prior art (calf hair/suede) and the accused knit versions from 2015 to date.
2. Records of importations including customs, duty or tariff codes for the Blackbird shoes—both the prior art (calf hair/suede) and accused knit versions.

See Dkt. 103 at 2–3 (explaining how the records are relevant to Birdies' invalidity contentions).

Birdies' objection to the timing of Rothy's request for the category no. 2 records is overruled. Rothy's followed the undersigned's January 20 instruction to "tell Birdies exactly what it needs to oppose summary judgment," and Birdies hasn't suggested that the records in question will require an unreasonable amount of time or effort to find and produce. Dkt. 92 at 1.

The parties need to meet and confer further about Rothy's request for the following records:

3. Shipping labels, receipts, or other records of Birdies' purchase, receipt, or shipping of any of Rothy's knit shoes.

The joint statement includes several confusing statements about the status of the parties' discussions about this category of discovery, and the undersigned cannot confidently identify

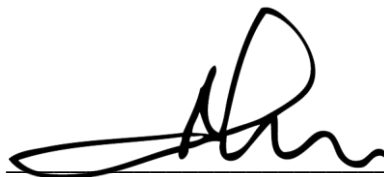
where those discussions stand. After further meet and confer, Rothy's may if warranted renew its request for some or all of this discovery.

* * *

Birdies' co-founders are scheduled to be deposed this week, on February 9 and 11. The discovery ordered here won't necessarily be produced before then. The depositions will accordingly remain open for the limited purpose of later asking the witnesses about documents produced pursuant to this order. This limitation is without prejudice to Rothy's later moving to reopen the depositions for other reasons if there is justification to do so.

IT IS SO ORDERED.

Dated: February 8, 2022

A handwritten signature in black ink, appearing to read 'Alex G. Tse', is written over a horizontal line.

Alex G. Tse
United States Magistrate Judge